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**REMARKS/ARGUMENTS**

Applicant thanks the Examiner for the outstanding Office Action and the indication of allowable subject matter in Claims 5-9, 14-18, 23-26, and 31-34. The Applicant respectfully disagrees with the rejection of Claims 1-4, 10-13, 19-22, 27-30, 35-39, and 40-45 stating as follows.

**Rejection under 35 USC 102(e)**

The Examiner has rejected Claims 1-4, 10-13, 19-22, 27-30, and 35-39 under 35 USC 102(e) as being clearly anticipated by Czaja et al. (USP 6,567,666). Applicant respectfully disagrees.

The Czaja et al. reference shows soft handoff between 2G and 3G CDMA systems. More specifically, Czaja et al. is concerned with reporting messages that inform the mobile station about the surrounding network. Such information included in the messages includes data rate, coding rate, signal strength, and other physical layer attributes. Accordingly, the prior art reference cited against the Applicants' instant application is concerned with the physical layer mechanisms related to handoff.

Contrary to the Examiner's assertions with regard to Claims 1, 10, 19, 27, 35, and 37, there does not appear to be any mention whatsoever within Czaja et al. of service options or utilizing information related to service options. The Applicant notes that service options pertain to the application layer mechanisms that creates the format of the data transfer - e.g., variable rate voice over Internet protocol is a 3G service option. Page 9 at lines 1-19 of Applicants' originally filed Specification is clear in that the term "service option" applies to the upper layer mechanisms - e.g., layer 2. These upper layer mechanisms are clearly distinct from the physical layer.

The Czaja et al. reference does not concern itself with the upper layer mechanisms and instead focuses on the physical attributes of handoff between 2G and 3G systems.

Indeed, no mention of the high-speed packet data service option is made in Czaja et al. Rather, the Examiner appears to presume that the Czaja et al. reference to IS-2000 and IS-95 networks is sufficient to imply negotiation and switching between a high-speed packet data service option and a non-high-speed packet data service option. Applicants respectfully disagree. Applicants point out that while IS-707 service options of the

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present invention are compliant with IS-2000 (see Applicant's original disclosure at page 10, lines 10-16), there is no requirement in IS-2000 for such service options. Indeed, there is no mention or any concern whatsoever in the Czaja et al. reference for consideration of the service option at handoff. This layer 2 mechanism is not discussed or considered in the physical layer invention of Czaja et al.

Applicants therefore respectfully submit that each independent claim includes the clear distinction that negotiation of service options occurs which is inherently above the physical layer. To further this point, Applicants have also added the phrase "independent of any physical layer mechanisms" to the switching aspect of each independent claim in order to make it clear that it is an upper layer negotiating and switching of service options. Accordingly, Applicants' instant invention is applicable to not only soft handoff (as in Czaja et al.), but also applicable to hard handoff situations.

The Examiner further asserted with regard to Claims 2,11, 20, 28, 36, and 38-39, that Czaja et al. teaches CDMA 3G systems covering the high-speed data service option. Applicants respectfully disagree and again point out that while IS-707 service options of the present invention are compliant with IS-2000 (see Applicant's original disclosure at page 10, lines 10-16), there is no requirement in IS-2000 for such service options.

In response to the Examiner's assertions against Claims 3,12, 21, and 29, Applicants' respectfully point out that none of the messages related to the pilot signals can be used as claimed with respect to negotiating service options.

Applicants submit that Claims 4,13, 22, and 30 each depend from claims that are believed allowable as discussed above and should therefore now be allowable themselves.

Accordingly, Applicants believe that Claims 1-4, 10-13, 19-22, 27-30, and 35-39 are not disclosed or fairly suggested by Czaja et al. and should now be allowed.

**Rejection under 35 USC 103(a)**

The Examiner has rejected Claims 40-45 under 35 USC 103(a) as being obvious over Czaja et al. in view of Bender (USP 6,747,964). Applicant respectfully disagrees and herein incorporates the arguments made above with regard to Czaja et al. More specifically, the Bender reference is used by the Examiner to allegedly provide evidence

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that the Czaja et al. invention could be formed by a computer readable media embodying a program to perform the instant inventive method. Bender does not appear to provide any features that would correct the deficiencies of Czaja et al. in that Czaja et al. still does fail to suggest alone or in combination with Bender negotiation and switching of service options between 2G and 3G networks. Accordingly, Applicants believe that Claims 40-45 should now be allowed.

No new matter is believed to have been entered and no new issues are believed to have been presented by way of this amendment. It is submitted that this application is now in condition for allowance, and action to that end is respectfully requested.

Respectfully submitted,

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